BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

MARCH 28, 1997

DOCKET NO. 96-232-W - ORDER NO. 97-192

IN RE: CONCERNED CITIZENS AGAINST CAROLINA WATER, INC.	)	
Complainant,	)	**ORDER DENYING PETITION FOR REHEARING OR RECONSIDERATION**
v.	)	
CAROLINA WATER SERVICE, INC.	)	
Respondent.	)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Petition for Rehearing or Reconsideration of Commission Order 97-38 (the "Order") dated January 8, 1997 in the above referenced matter. The Petition was filed by Carolina Water Service, Inc. ("CWS" or the "Company") on February 4, 1997 in a timely manner.

The Petition requests that this Commission provide for a rehearing of this matter or issuance of a new Order (1) rescinding the forfeiture of the Company's bond, (2) rescinding the Directive ordering a management audit of the Company, and (3) rescinding the requirement that the Company interconnect with West Columbia. This Commission ordered these actions in response to complaints which originated in early July of 1996 as filed by Concerned

Citizens Against Carolina Water, Inc. ("CCACW") against CWS.

The original complaint alleged that, amongst other items, CWS had improperly imposed mandatory curtailment of outside water usage in the CWS service area located in Lexington County (this service area is known as the "I-20 area" or the "I-20 system"). Three of the wells in the I-20 service area were out of service at that time, and the customers were reportedly experiencing low pressure and shortage situations. A hearing was held on July 17, 1996, in response to this complaint. Fourteen public witnesses and Ms. Brenda Bryant, a Party of Record, testified at this hearing. In addition, Mr. Keith Murphy, CWS Regional Director, Mr. Larry Boland of the South Carolina Department of Health and Environmental Control ("DHEC"), and Mr. Charles Creech of the Commission Staff ("Staff") also presented testimony at that hearing.

Subsequent to that hearing, the Commission issued Order No. 96-487. In that Order, the Commission held in part that (1) CWS was to cease the mandatory curtailment in effect at that time and that the I-20 area customers were to restrict their outside water usage; (2) CWS, the Commission Staff and DHEC were to formulate a plan of action to alleviate future shortages and that such plan should be presented to the Commission at the next scheduled Commission meeting; and (3) Staff was to investigate the institution of proceedings to

pursue CWS's bond ("bond") [1] on file with the Commission pursuant to statute. In that same Order, the Commission specifically found CWS at fault for failing to take action in response to and in compliance with DHEC's requests pertaining to the three wells that were out of service in the I-20 area, and that such failure contributed to the emergency shortage experienced in the I-20 service area in late June and early July of 1996.

In response to Order No. 96-487, CWS filed its Plan on July 29, 1996. The Commission reviewed the Plan and the service area situation and issued Order No. 96-524 on August 1, 1996. In that Order, this Commission ordered CWS to take immediate steps to provide adequate service through the purchase of water from a utility or municipality in order to alleviate present shortages and prevent future shortages. Staff was then instructed to initiate a proceeding, by giving notice, to determine whether the Company had willfully failed to provide adequate and sufficient service without just cause and excuse and whether such failure continued for an unreasonable length of time. The potential outcome of this proceeding was the possible forfeiture of the Company's $50,000 bond on file with the Commission. This ordered action was taken pursuant to S.C. Code Ann. §58-5-720 (Supp. 1996).

1.The Company satisfied the statutory requirement of the bond by maintaining a letter of credit. For ease, we herein refer to this filing as a "bond".

Pursuant to Order No. 96-589, a hearing was held on September 25, 1996. On behalf of the Company the following witnesses presented testimony: Keith Murphy, CWS Regional Director; Lawrence Schumacher, President of Utilities, Inc., parent company of CWS; and Robert G. Burgin, P.E. Charles Creech testified on behalf of the Commission Staff. Joe Rucker, DHEC, also appeared and presented testimony. Ms. Brenda Bryant testified as well. Subsequent to that hearing the Commission issued Order No. 97-38 in which we ruled that (1) CWS willfully failed to provide adequate and sufficient service without just cause or excuse, and that such failure continued for an unreasonable length of time in regard to the water service provided to the CWS customers in the I-20 service area; (2) that a management audit should be conducted of Utilities, Inc., of Water Service, Inc., of Carolina Water Service, Inc., and of CWS's operations, and of all overhead costs allocated to CWS customers, and that such management audit was to be funded by the forfeiture of the existing $50,000 water bond currently on file with the Commission. Additionally, we held in that Order that CWS was to file a "replacement" bond with the Commission since the previous bond had been forfeited. CWS was also ordered to interconnect with the City of West Columbia through a four inch or six inch tap as soon as possible to provide better quality of water to the CWS customers in the I-20 service area. Such interconnection was conditioned upon CWS obtaining financial arrangements (regarding the cost of water

being purchased) equivalent to the existing rates being paid to the City of West Columbia.

The Company sets forth in its Petition the following issues for rehearing or reconsideration by this Commission. Upon consideration of each issue, we hereby deny each and every issue for rehearing or reconsideration for the reasons listed below.

I. THE COMMISSION'S DECISION TO FORFEIT THE COMPANY'S BOND DUE TO THE COMPANY'S WILLFUL FAILURE TO PROVIDE ADEQUATE AND SUFFICIENT SERVICE WITHOUT JUST CAUSE OR EXCUSE FOR AN UNREASONABLE LENGTH OF TIME IS SUPPORTED BY THE EVIDENCE.

As the Company states, this Commission must find, pursuant to S.C. Code Ann. §58-5-720 (Supp. 1996), that the utility "willfully failed to provide [adequate and sufficient] service without just cause or excuse and that such failure has continued for an unreasonable length of time" in order to justify revocation of a public utility's bond. We believe that the evidence of record does support such a finding.

The Company generally states that the evidence itself was insufficient to support the Commission's conclusions. Specifically, the Company asserts that the delay in repairing the wells was not due to a "willful failure". CWS cites that it was required to secure permits for construction to the system and for the operation of the upgraded system. CWS states that the process for obtaining these permits followed the "normal procedures" with DHEC and that the Company was required to provide considerable information in response to DHEC's inquiries in support of the proposed changes to the

system.

We disagree with the Company on these points. Certainly this Commission would never suggest that a public utility circumvent the legal requirements of another State Agency. We do not feel though, that CWS's claim that the length of "processing" time claimed was causative of the delay was appropriate. Our concern here stems from the knowledge that the Company had: knowledge that the system needed repairs, knowledge that the repairs would take time, knowledge that the three wells being out of service reduced the flow of the system by approximately thirty percent, (TR. Vol. 2 at p. 41) and the knowledge that the wells needed to be operational at the latest by April 1996 in order to prepare for the coming summer months. The Company is well aware, due to its history here in the midlands of South Carolina, that hot, dry weather is to be expected in the summer season.

As we stated in our original Order No. 97-38, the record reveals that the three wells were not operational as long as one year after the time that DHEC originally notified CWS that problems existed with the wells. We do not find any persuasive evidence of record to constitute "just cause and excuse" on the part of the Company to explain the failure of the Company to provide adequate and sufficient service.

Company witnesses acknowledged that the Company as a whole would "do things differently" in the future (TR. Vol. 1 at p. 44,59-60,67; Vol. 2 at p. 10-12). According to Company witnesses, CWS shut down the three wells in the late

summer/early fall of 1995 and "put them off to the side at that time" until further action could be taken (TR. Vol. 1 at p. 24). Company witness Burgin stated that he wanted the first well to come on line in early February 1996 (TR. Vol. 1 at p. 49). However, the continued negotiations between CWS and DHEC, which were discussed in the hearing testimony, extended in time to the detriment of the customers in the I-20 service area. We are not persuaded that the Company and its employees pursued repair of these wells in such manner to provide "adequate and sufficient service" to the I-20 service area.

In fact, the record reveals that DHEC witness Rucker stated that DHEC did everything it could have to facilitate the process and was willing to forego some of the process. Rucker stated that "there was no intentional delay whatsoever." (TR. Vol. 2 at p. 42) In response to whether DHEC was "pressing the Company to move along and reach a resolution to [the] problem" witness Rucker responded that indeed the Department was pressing the Company, and the Department went so far to call an enforcement conference with the Company due to the urgency of the situation. DHEC even gave the Company permission to begin construction before permits were issued due to the situation at hand. (TR. Vol. 2 at p. 42-45)

Rucker stated that, "normally our permitting process takes about 30 to 45 days maximum. In the case of an emergency or a situation like this, we take these projects out of line

rather than letting them sit in our backlog, and I'm quite sure that if the submittal had been complete that, you know, we could have issued the permit in less than thirty days." (TR. Vol. 2 at p. 44) Witness Rucker characterized the late June/early July 1996 situation with the I-20 system as "severe" (TR. Vol. 2 at p. 38) Nevertheless, witness Rucker testified that the Company never submitted a complete set of plans for the system until well into the spring of 1996 - long beyond the purported February 1996 deadline to which Mr. Burgin testified. (TR. Vol. 1 at p. 51) Burgin stated that he "made a mistake in pursuing it as long as [he] did." He was "painfully aware that [CWS and DHEC] could have these academic discussions all day long as engineers, but we needed to move forward with the correction to the system." The Company witness claims to have made efforts to facilitate the process (TR. Vol. 1 at p. 52), but approximately five months passed before a decision was made regarding the wells' filter media.

Although the Company portrays DHEC's request for information and other inquiries as causative of the delays, Company witness Burgin himself states that DHEC's questions were "very valid ... they were relatively minor questions that are resolved on a routine basis ...." (TR. Vol. 1 at p. 59). Witness Burgin goes on to state that "essentially we were at a point of approval of the plans on the first of March and that we should not have gotten caught up on dwelling on the minors ...." (TR. Vol. 1 at p. 59) As a

Commission charged with overseeing the adequacy and sufficiency of public utilities' service of water and sewer, we believe that this evidence is unpersuasive to show us that truly the Company aggressively attempted to resolve the system's problems. We feel that the delays and the failure to take action equate with failure to provide adequate and sufficient service.

Our conclusion is fully supported by the testimony of the customers of the I-20 service area who experienced problems with the I-20 system. As the evidence shows, the Company instituted both voluntary and mandatory restrictions on water usage in the I-20 system. By virtue of issuance of these restrictions, the Company clearly had knowledge of the reduced supply to the I-20 system. The supply was reduced by not only the hot weather but, more importantly, the three wells being out of service.

Although in its Petition the Company states that our conclusion regarding shortages was "unjustified," we again disagree with the Company. As stated in the footnote to our original Order 97-38, DHEC witness Rucker had explained that outages were not definitively confirmed. According to Mr. Rucker, outages and low pressure situations may last for short periods of time. Inspectors must travel to consumers' homes to investigate complaints of outages. The pressure in those homes has often increased enough to supply water to the home by the time the inspectors actually arrive at the home after the report of the problem. We find both persuasive and

compelling the testimony of the many disgruntled consumers who have complained in this docket of problems with the supply, the system's pressure, and of "cloudy" or "milky" water. DHEC witness Rucker testified to this Commission that water may become cloudy or milky in a system when a well is drawing water from a low level in the well, and the water is therefore mixed with much air. The air in the water forms minute bubbles that cause the water to appear whitish in color. (TR. Vol. 2 at p. 64.)

We find persuasive the many citizens' complaints that the pressure in the system was low. Additionally, we note that the Company was aware of the potential shortage due to the fact that it interconnected on an emergency basis with the City of West Columbia in order to increase its water supply to the I-20 system.

The Company additionally cites as proof of the system's adequacy the calculations of the system's supply. Again, we are not persuaded by the testimony offered by the Company. At best, the calculations offered by the Company, as set out in witness Burgin's "Brief" (Hearing Exhibit No. 1), are not conclusory. The Brief alleges that the system's supply was sufficient. If Mr. Burgin's numbers were entirely correct, then we do not understand why an interconnect with West Columbia would have been necessary. The study fails to state why indeed a shortage existed in the Summer of 1996. Further, the restrictions, both voluntary and mandatory, would not have had to have been instituted by the Company.

Mr. Burgin's calculations exhibit an adequate supply for the system, even under the circumstances experienced in spring/summer 1996. DHEC witness Rucker testified that he could not explain why Mr. Burgin's numbers were calculated as such. Mr. Rucker analyzed Burgin's calculations. He utilized the records of the Company. He had difficulty compiling the numbers because the Company's operator records were incomplete. Rucker found no problem with the loss occurring within the system, but he did discover that the wells were not producing as much water as is on record or as much as is utilized in Mr. Burgin's report. (TR. Vol. 2 at p. 36) DHEC witness Rucker additionally states that the "combined yields of the remaining wells were not sufficient to support the existing number of customers. With the three wells back on line, the capacity [was] marginally sufficient to serve the existing customers .... There [was] no reserve capacity that would allow for mechanical failures or treatment upsets that would remove a well from service." (TR. Vol. 2 at p. 37)

The Company also complains that the Commission wrongly prohibited the Company to from submitting evidence regarding the Company's proposed transfer of the system to the Town of Lexington. We feel that this evidence was irrelevant in the current proceeding. The Commission was and is aware of the circumstances surrounding the proposed transfer, as the request for the transfer was contained in a separate docket before the Commission at the time of the hearing. We see no

link between the Company's wish to transfer the system to the Town of Lexington and the Company's failure with regards to the wells and the I-20 system.

The Company cites a 1996 South Carolina Court of Appeals case to support its argument that the Commission's decision in Order 97-38 is unsupported by the evidence. See, Anonymous v. State Board of Medical Examiners, ___S.C.___, 473 S.E.2d 870 (1996). Although the cited case concerned a State Agency, we feel that the action there (termination of an individual's medical license and right to practice) and the action concerned in the instant docket (forfeiture of a corporation's performance bond) are quite distinguishable. As evidenced by the above quoted portions of record, we feel that the record supports our determination in Order 97-38 that the Company willfully failed to provide adequate and sufficient service for an unreasonable length of time. The "clear and convincing" standard set out by the Court of Appeals in the Medical Examiners case is simply not applicable here, where a "willful" standard is set out in the statute.

II. USE OF THE PROCEEDS OF THE BOND FOR A MANDATORY MANAGEMENT AUDIT IS APPROPRIATE IN THIS CASE.

The Company next states that our decision to utilize the proceeds of the bond to fund a management audit is unsupported by the record. Again, we disagree with the Company's assertion. As stated by the Company, S.C. Code Ann. §58-5-720 (Supp. 1996) does not describe the manner in

unsupported by the record. Again, we disagree with the Company's assertion. As stated by the Company, S.C. Code Ann. §58-5-720 (Supp. 1996) does not describe the manner in which the proceeds of a forfeited bond shall be used. In fact, we believe, based upon this Commission's knowledge of the Company and its subsidiaries and employees, that the decisions which led to the failure in provision of adequate and sufficient service may stem from the Company's management. We believe that a management audit would reveal enlightening information which would assist this Commission in regulating the Company and its parent companies so that South Carolina consumers may be provided better service by the Company.

This Commission also believes that it is the Company's responsibility to repair its system to provide adequate and sufficient service to its customers. We note that the proceeds to the bond would have been unavailable to the Company to utilize for upgrading the system if the Commission had not forfeited the bond anyway. We believe that a thorough examination of the Company's operations, as well as its rates, may reveal to this Commission information that will assist the Commission in its regulation of the Company in the future. We believe that inquiry is needed into the manner in which the Company is spending the consumer's rates in its provision of service. We are concerned about the level and quality of service provided to the South Carolina consumers and feel that it is completely within this

Commission's jurisdiction to examine these matters.

III. THE COMMISSION'S ORDER TO INTERCONNECT CWS AND WEST COLUMBIA IS APPROPRIATE IN THIS INSTANCE.

The Company contends that the Commission improperly ordered an enlargement of the existing interconnection between the Company and the City of West Columbia. This Commission stands behind its original decision. The Order to enlarge the interconnection was based on the Commission's concern that consumers in the I-20 area receive both the quantity and quality of water necessary. With the knowledge that the Company had an existing interconnection that the Company and the City of West Columbia wilfully entered into on a voluntary basis, we ordered that the interconnection be enlarged to the benefit of the consumers of the I-20 area. We conditioned the requirement upon CWS obtaining financial arrangements for the cost of water purchased equivalent to the existing rate that CWS was paying West Columbia.

We did not order the Company to take action which it had not already taken itself or under conditions which were detrimental to the Company. We believe the interconnection would provide both better and assured quantity as well as improve quality since the Company itself stated that the older wells experienced quality problems. We stated that the rates for the interconnection supplied from West Columbia should be at least "equivalent" to the rates already paid by CWS so that, if in fact West Columbia would not provide equivalent or better rates to the Company for the increased

interconnection supply, we could then revisit the decision at that time.

For the above stated reasons, the Petition for Rehearing or Reconsideration as submitted by Carolina Water Service, Inc., is hereby denied.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION.

CHAIRMAN

ATTEST:

EXECUTIVE DIRECTOR

(SEAL)